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IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE COMMITMENT OF H.H.,	)	
Appellant-Respondent,	)	
vs.	)	No. 49A02-0703-CV-237
WISHARD HEALTH SERVICES MIDTOWN HEALTH CENTER,	)	
Appellee-Petitioner.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Charles J. Dieter, Judge
Cause No. 49D08-9803-MH-103

September 28, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

H.H. appeals from the trial court's order involuntarily committing him temporarily to a mental institution.[1] He raises one issue, which we restate as whether sufficient evidence supported the finding that he is dangerous or gravely disabled. We affirm.

Facts and Procedural History

The evidence most favorable to the judgment reveals that on January 25, 2007, thirty-nine-year-old H.H. attended a pep rally for the Indianapolis Colts in front of a radio station on Monument Circle in downtown Indianapolis. Tr. at 19, 6; Appellant's App. at 10. A man driving a blue bus with the Colts' insignia on it invited Colts fans for a free ride to the RCA Dome. H.H. boarded the bus and, using profanity, stated he wanted to be the greatest boxer in the world. Tr. at 19. The driver put his hands on H.H.'s shoulder, told him he could not speak like that on his bus, and ordered H.H. off the bus. *Id*. at 19, 6. H.H. exited the bus and called police to report that the bus driver had assaulted him. *Id*. at 20.

Police responded but did not arrest the bus driver. *Id.* At the scene, H.H. had a "second instance with some of those same officers." *Id*. at 6. H.H. was transported to Wishard Psychiatric Emergency Room where emergency detention procedures to hold H.H. for seventy-two hours were initiated. *Id*. at 6, 26; App. at 29. Within the Application for Emergency Detention, one of the officers placed an "x" in the spaces indicating his belief

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[1] Because H.H. was committed for ninety days or less, the commitment from which he appeals has ended. Ordinarily this matter would then be moot. While we generally dismiss cases that are deemed moot, such cases may be decided on their merits where they involve questions of great public interest that are likely to recur. *See Golub v. Giles*, 814 N.E.2d 1034, 1036 n.1 (Ind. Ct. App. 2004), *trans. denied*. As we have often stated, questions of involuntary commitment fall within those parameters and should be addressed. *See*

that H.H. "is suffering from a psychiatric disorder which substantially disturbs his thinking, feeling, or behavior and impairs his ability to function." App. at 29. The same form noted the officer's belief that H.H. is dangerous to himself and others, and included the following details: "Pt was calling FBI, cops will not let African/American into hospital[.] Pt delusional and manic. Pt believes people are attempting to hurt him. Pt threatening – going to fight people + he is the greatest fighter ever[.]" *Id*. In an attached Physician's Emergency Statement, Dr. Emily Liffick stated that H.H. "may be mentally ill and dangerous … Patient is irritable, agitated, & verbally threatening[.]" *Id*. at 30. In noting the basis for her statement, Dr. Liffick checked boxes for "personal observation of the current crisis; and/or … information given to me by" the officers. *Id.* H.H. was admitted to Wishard Health Services/Midtown Community Mental Health Center ("Midtown") on January 26, 2007. Tr. at 5.

In a January 30, 2007 "Report Following Emergency Detention," it was noted that H.H. "elected to continue treatment on a voluntary basis" as shown by an attached Application for Voluntary Treatment signed by H.H. App. at 27-28. Pursuant to the voluntary admission form, H.H. agreed to "participate in the treatment program prescribed for [his] benefit, by attending and/or consulting physicians … includ[ing] medications, psychotherapy, activity therapies, and general health care" at the locked unit. *Id*. at 28. He further agreed that if he wished to leave Midtown before the physicians believed he was

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In re Commitment of Bradbury, 845 N.E.2d 1063, 1064 n.1 (Ind. Ct. App. 2006). Accordingly, we review H.H.'s appeal.

ready, he had to complete a written request for discharge against medical advice, which would permit the physician twenty-four hours to consider the request. *Id*.

On February 1, 2007, Dr. Michael DeMotte, on behalf of Midtown, filed a Petition for Involuntary Commitment and Special Conditions of Temporary Commitment. *Id*. at 33-39. The petition alleged that H.H. was dangerous in that his psychiatric disorder "presents a substantial risk of harm to others. … periodic agitation, threatening, intimidation with observer + self report of aggravated, irritable mood[.]" *Id.* at 34. In addition, the petition alleged that H.H. "is gravely disabled in that" his psychiatric disorder puts him in danger of coming to harm because of a substantial impairment or obvious deterioration in judgment, reasoning, or behavior that results in [H.H.'s] inability to function independently. … grandiose + flight of ideas impairing logically reality based judgment." *Id*. It listed the least restrictive environment as "acute inpatient stabilization." *Id*.

Attached to the Petition for Involuntary Commitment is a Physician's Statement, also signed by Dr. DeMotte, in which he specified "Bipolar disorder – manic episode" as the psychiatric disorder at issue. *Id*. at 36. Dr. DeMotte checked the boxes for dangerous to others and substantial impairment. *Id*. at 37. The following handwritten descriptions of H.H. were included: "agitation intimidation with patient identifying mood as aggravated" and "grandiose plans and flight of ideas impairing judgment for making logical decisions *including maintaining self in community*." *Id*. (emphasis added).

On February 7, 2007, Dr. DeMotte and H.H. testified at a hearing regarding the temporary commitment petition. At the conclusion of that hearing, the presiding commissioner stated:

> Based on the evidence and testimony presented today in open court, the Court grants [Midtown's] petition for Temporary Commitment of [H.H.]. Court finds that [H.H.] is gravely disabled, and dangerous to others. Commitment expires 5/8/07[.] Treatment plan is due February 22, '07. Court orders the following special conditions: Respondent shall take all medications as prescribed. Shall attend all clinic sessions as scheduled, maintain his address and phone number with the Court, and shall not harass or assault family members, or others.

Tr. at 28. The written commitment order, signed by the judge, found that H.H. was "gravely disabled," but had no "x" in the blanks for dangerous to self or others. *Id*. at 7.

Discussion and Decision

Indiana Code Section 12-26-6-1 allows a court to order an individual's temporary commitment that continues for up to ninety days if the petitioner proves by clear and convincing evidence that the individual is mentally ill and either "dangerous" or "gravely disabled." *In re Commitment of Bradbury*, 845 N.E.2d 1063, 1065 (Ind. Ct. App. 2006). Civil commitment is a significant deprivation of liberty that requires the petitioner to show "that the individual suffers from something more serious than is demonstrated by idiosyncratic behavior." *Addington v. Texas*, 441 U.S. 418, 427 (1979). When we review an order for commitment, we consider only the evidence favorable to the judgment and all reasonable inferences therefrom. *M.Z. v. Clarian Health Partners*, 829 N.E.2d 634, 637 (Ind. Ct. App. 2005), *trans. denied*. We will not reweigh the evidence or judge the witnesses' credibility. *Golub v. Giles*, 814 N.E.2d 1034, 1038 (Ind. Ct. App. 2004), *trans. denied*. "If the trial court's commitment order represents a conclusion that a reasonable person could have drawn, the order must be affirmed, even if other reasonable conclusions are possible." *Bradbury*, 845 N.E.2d at 1065.

H.H. does not dispute that for approximately fifteen years, he has suffered from bipolar disorder, a condition that falls within the term "mental illness" under Indiana Code Section 12-7-2-130. Rather, H.H. asserts that there was no evidence that he was unable to provide for his needs or unable to function independently, that is, no support for the "gravely disabled" written finding. In challenging the oral finding of dangerous to others, H.H. contends that he did not react violently when he was escorted off the bus. We address both contentions.

A. Gravely Disabled

Indiana Code Section 12-7-2-96 defines "gravely disabled" as "a condition in which an individual, as a result of mental illness, is in danger of coming to harm because the individual: (1) is unable to provide for that individual's food, clothing, shelter, or other essential human needs; or (2) has a substantial impairment or an obvious deterioration of that individual's judgment, reasoning, or behavior that results in the individual's inability to function independently."

The only evidence available regarding the first prong of Section 12-7-2-96 reveals that until his commitment, H.H. had been renting a room in a house, working at a day labor facility, receiving disability, seeing a doctor through Midtown Outpatient, and taking Lithium and Seroquel to control his bipolar symptoms. Tr. at 15-17. Thus, it is difficult to find support for a conclusion that H.H. was unable to provide for his food, clothing, shelter, or other essential human needs.

Moving to the second prong of Section 12-7-2-96 (substantial impairment/obvious deterioration), we review evidence presented at the commitment hearing. In particular, we

review the testimony of Dr. DeMotte, Assistant Clinical Professor of Psychiatry with Indiana University, the physician who was attending to H.H.'s care from the time of his admittance to Midtown and through the time of the hearing. Dr. DeMotte stated that after reviewing records of H.H.'s medical history (which includes three prior hospitalizations for mental illness at Midtown, acute care in a California hospital, and treatment while in prison), and examining H.H., he diagnosed him with bipolar disorder with a current manic episode. Tr. at 6. Dr. DeMotte based his diagnosis on:

> Greater than one week of symptoms of elevated irritable mood, primarily irritability, that has also resulted in hospitalization, decreased sleep, increased rates of speech, and flight [of] ideas in his thinking, grandiose delusions, involving that he is a very established boxer in the world, as well as, religious references that the Bible is referring to him, increased activities, variety of different financial schemes that he is also trying to put together, and increased sexual interest, as well.

Id. at 6-7. In addition, H.H. "has developed some various ideas of how he would essentially black mail others to maintain his housing in the current state." *Id*. at 8. Dr. DeMotte noted H.H.'s "sporadic outpatient treatment" and his attempt to rejoin services "particularly with the Lithium . . . but it is not sufficient in itself *at this point* to manage his care." *Id.* at 10 (emphasis added). Dr. DeMotte opined that H.H.'s current symptoms indicate a substantial impairment or obvious deterioration in his judgment, reasoning, or behavior. *Id*. at 8. When asked about a treatment plan, Dr. DeMotte discussed "necessary first symptom improvement," "continuing the Lithium, and getting that to a therapeutic dose," augmenting it "at this time" with another drug, and anticipated hospitalization for a week to ten days for symptom stability." *Id*. at 10.

During his testimony, H.H. relayed his version of how he ended up at the emergency room:

> So, for some reason, the dispatcher called me, and said, "[H.H.] are you hurt? Do you need an ambulance?" I said, "Yes. I was carrying two bags, and my arms hurt." "We're going to send an ambulance there to get your arm checked out." That's how I ended up going to the hospital. … I didn't go to the hospital in handcuffs, because I broke the law or something like that. I went to the hospital on my own free will to get my arm checked out.

Id. at 20. When asked if he was in a manic phase, H.H. replied in the negative, explaining:

> If I was in a maniac [sic] phase, I probably would have done something to that [bus driver]. … You know, because I wouldn't have been able to control myself. I was in control of myself since I was in the emergency room. When I was in the emergency room they told me to, "Shut up! Sit down! And, don't say a word!" … So, I sat up there, and didn't say a word. Because, they look like they were getting ready to jump on me. And, I asked if [I] can use the bathroom. And they said, "No, you can't use the bathroom until you get treated" whatever that means. … So I sat there like I was so … and, I did what I was told. Now, if I had been maniac [sic], there is no way that I would have been able to sit there, and do that.

Id. at 21. When asked whether he had been threatening toward hospital staff, H.H. responded:

> As to most of the staff there that has came face to face with me, played domino's with me, most of the staff there really adore me. … They really liked me a lot, because I'm a likeable person. … And, there's some that don't like me. For some reason, they want to make me think that I'm crazy. … Because, I am. I mean, somebody put a metal fork underneath my pillow. … And, the nurse said, "We give plastic silverware." I don't know where it came from. … I had no access to a metal fork. I know that there was something going on in that hospital. … And, I felt like … I tried to call security to tell them about this, and they took my phone privileges away and said, "Well, you can't use the phone." I said, "I just called, because I think someone is trying to set me up."

Id. at 23-24. When asked how he felt about potentially staying at Midtown longer, H.H. answered:

> I really want to go back home. I feel like, we can do an outpatient thing, if we need to do that. … Because, I really don't feel like I need to be hospitalized. You know, if I feel like I need to be hospitalized, I'll tell you that I can't make it. But, I don't feel like that. I can get up every morning like I've been doing, and go see whatever doctor you want me to go see, any class you want me to go to, and do it with flying colors, and would be happy to do it. I told them that before we came here. … They said they want to go through this process. But, as far as, staying in this hospital, I did not want to stay in the hospital. Because, like I said, I found a fork underneath my pillow. I don't know what's going on in the hospital. They put me in a room, and the floor had urine on it so bad, that I had to get on my hands and knees to mop the floor myself. You know. … So, Wishard is not a place where … not to me, a good place to be.

Id. at 24. When his lawyer asked him if he felt capable of taking care of himself at that time, H.H. replied, "Yes ma'am. Totally. I mean, I have my own place. I had my own place. Anyway, I saved my money up and got me a place, got me a little car." *Id*. at 26. During cross-examination, H.H. resisted the idea of submitting to the care of a doctor other than the one he had been seeing on an outpatient basis. *Id.* at 27. Yet, he also admitted that he had not taken the medication dosage that had been prescribed by his preferred doctor. *Id*.

Although we might have weighed the evidence differently or made different credibility determinations had we heard the testimony firsthand at the commitment hearing, as an appellate court, we are not at liberty to second-guess the trial court's judgments in this regard. When faced with conflicting evidence, we must consider only the evidence favorable to the judgment and all reasonable inferences therefrom. *Golub*, 814 N.E.2d at 1038. Applying that standard, we find sufficient evidence to support the finding that H.H. had a substantial impairment or an obvious deterioration of judgment, reasoning, or behavior that resulted in his inability to function independently at the time of the hearing. *Cf. In re Commitment of Steinberg*, 821 N.E.2d 385, 389 (Ind. Ct. App. 2004) (reversing involuntary

commitment where "[*n*]*othing* in the record indicates that Steinberg was unable to provide for his essential human needs or that he was unable to function independently") (emphasis added).

B. Dangerous to Others

Indiana Code Section 12-7-2-53 defines "dangerous" as "a condition in which an individual as a result of mental illness, presents a substantial risk that the individual will harm the individual or others." A trial court is not required to wait until harm has nearly or actually occurred before determining that an individual poses a substantial risk of harm to others. *See Matter of Commitment of Gerke*, 696 N.E.2d 416, 421 (Ind. Ct. App. 1998) (holding that a commitment premised upon a trial court's prediction of dangerous future behavior, without prior evidence of the predicted conduct, was valid, and observing "[t]he old adage of 'the dog gets one bite'" does not, and should not, apply in the context of commitment proceedings, despite the severe restrictions on liberty imposed by commitment to a mental facility).

Dr. DeMotte testified that he believed that H.H. is a danger to himself and others. Tr. at 7-8. He based his belief upon "the level of agitation that [H.H.] has displayed frequently on [the] unit," the inter-muscular injections that were indicated but refused, an altercation H.H. had with another patient/peer, and numerous threats to Dr. DeMotte. *Id.* at 8. Dr. DeMotte continued, "there have been other situations, with a variety of staff members and myself. And, law enforcement officers one time did result in seclusion" for a separate incident not involving a peer. *Id.* at 13. H.H. made "numerous punching" gestures in the

psychiatric emergency room and has "been more of very intensely verbally, cursing in a loud tones, getting in violated boundaries of personal space[.]" *Id*.

According to H.H., "I haven't threatened anybody." *Id*. at 24. H.H. had this to say about the altercation with the peer/other patient:

> I recall … what happen was, the guy … it was actually two females at the table, and he sang a song, and I sung a song better than he sang a song, and he got upset. … And, threw the cards on the table, and said, "Man, I don't need this." … No time did I ever jump up, and run to his face and say, "Let's fight." I said, some words back to him, like he said back to me. But, I know good and well if I had a court date coming up, a fight would not do any good for me … on my record.

Id. at 22. H.H. described the incident as just verbal, no hands. *Id*.

Again, without reweighing evidence or attempting to judge credibility on a paper record, we conclude that sufficient evidence was presented to support the finding that H.H. was dangerous to others at the time of the commitment hearing. *See Jones v. State*, 477 N.E.2d 353, 360 (Ind. Ct. App. 1985) (finding sufficient evidence of dangerousness where, *inter alia*, doctor testified that Jones was verbally assaultive and physically threatening to such a degree that she was sequestered from other patients), *trans. denied*; *cf. Commitment of L.W. v. Midtown Cmty. Health Ctr.*, 823 N.E.2d 702, 704 (Ind. Ct. App. 2005)(finding insufficient evidence of dangerousness where no evidence of threats and where doctor testified that L.W. "has been pleasant and compliant while at the hospital and that he has not been dangerous to others or to himself*")*; *cf. Matter of Commitment of Linderman*, 417 N.E.2d 1140 (Ind. Ct. App. 1981) (reversing involuntary commitment for an indefinite period of time where there was "no evidence" that Linderman ever threatened physical harm to

himself or anyone else, let alone actually committed any violence; petition had been filed by jail warden).

We reiterate, "[i]f the trial court's commitment order represents a conclusion that a reasonable person could have drawn, the order must be affirmed, even if other reasonable conclusions are possible." *See C.J. v. Health and Hosp. Corp. of Marion County*, 842 N.E.2d 407, 409 (Ind. Ct. App. 2006); *In re Commitment of Heald*, 785 N.E.2d 605, 613 (Ind. Ct. App. 2003), *trans. denied.* Given the evidence presented, and applying the proper standard of review, we find that the temporary involuntary commitment order represents a conclusion that a reasonable person could have drawn. Indeed, there was sufficient evidence to meet one or both prongs of Indiana Code Section 12-26-6-1. Hence, we must affirm.

Affirmed.

DARDEN, J., and MAY, J., concur.